

Members

Sen. Richard Bray, Chairperson  
Sen. Randall Head  
Sen. Greg Taylor  
Sen. Lindel Hume  
Rep. Matt Pierce  
Rep. Linda Lawson  
Rep. Ralph Foley  
Rep. Wes Culver  
Judge John Marnocha  
Lance D. Hamner  
Professor Craig Bradley  
Professor Stephen F. Smith  
Mark Massa



# CRIMINAL CODE EVALUATION COMMISSION

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## MEETING MINUTES<sup>1</sup>

**Meeting Date:** September 30, 2009  
**Meeting Time:** 1:30 P.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 233  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 1

**Members Present:** Sen. Richard Bray, Chairperson; Sen. Randall Head; Sen. Greg Taylor; Sen. Lindel Hume; Rep. Matt Pierce; Rep. Linda Lawson; Rep. Ralph Foley; Rep. Wes Culver; Judge John Marnocha; Judge Lance D. Hamner; Professor Craig Bradley; Professor Stephen F. Smith.

**Members Absent:**

Senator Bray called the Committee to order at 1:35 pm. Senator Bray stated that the commission will meet over the next three years and that there is no direct agenda for the commission, but a charge to study the criminal code. There is necessity to make changes to the code since the last revision of the code. Since the last time the code was rewritten, there have been changes made to the code without looking at the big picture. This is why the commission's work is necessary. The commission will meet twice in the fall of 2009.

Mr. Steve Johnson of the Prosecuting Attorneys Council stated that making people serve 85% of their sentences requires examining the penal code to evaluate the length of these current sentences. Prosecutors are not always in favor of more penalties for offenders. There needs to

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be obtained electronically by requesting copies at [licrequests@iga.in.gov](mailto:licrequests@iga.in.gov). Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

be more coordination between all stakeholders in the criminal justice system to consider which offenders should receive early release for good behavior credit time and for local credit time. Mr. Johnson also indicated that many crimes in the Indiana Code cover essentially the same act. As examples, separate offenses exist for theft, fraud, and car jacking even though all are essentially theft. Changes to the criminal code need to be made in the context of the entire code, not just one law at a time. Also, there needs to be clearer listings of crimes and names given to crimes since these can be difficult to determine based on wording in the statute.

Mr. Larry Landis of the Public Defenders Council agreed with much of what Mr. Johnson said. Over the past 30 years, legislation has systematically eliminated intermediate sanctions. Now the only sentencing options are essentially prison or probation. There needs to be more options other than simply looking at how much time an offender should serve. There should also be help for those addicted to drugs and alcohol in prison. Often members of the General Assembly react to heinous crimes and anecdotal evidence when making changes to the criminal code. This can lead to disproportionate punishment for different crimes. As an example, a defendant can receive a 20-year sentence for a cocaine charge, but only 3 years for rape. Often with sentencing enhancements, judges do not have the appropriate amount of discretion but are forced to add time because of them. Evaluating the criminal code will help the state to revisit why individuals should be incarcerated.

Senator Bray and Mr. Landis discussed the problems with proportionality in certain crimes. Particularly, Mr. Landis stated that often drug offenses are put on the same level with crimes against individuals. Senator Bray noted that there are some issues with sex crime statutes that need to be addressed. He noted that there may be a reason to file interim legislation, but that the whole review will take three years.

Representative Foley noted many criminal provisions outside of Title 35. Mr. Landis distributed a matrix of crimes and noted how many were outside of Title 35 and how many were new since the 1977 revision. Representative Foley stated that when the legislature is in session, often they are asked to vote on laws based on anecdotal evidence and that they often duplicate the laws that exist. He suggested that having suggestions of new offenses come in front of the commission would help legislators to discuss the issues in a less heated environment.

Judges Marnocha and Hamner indicated that some of the issues the General Assembly examines come through federal mandate. They noted the movement for a distracted driving mandate and the Adam Walsh laws.

Senator Taylor noted that the laws that are passed by the legislature are left for interpretation by law enforcement. He noted that often law enforcement will add as many charges as possible to an arrestee. He noted that as police officers are put into schools, the number of felonies committed remains the same, but the number of misdemeanors increases.

Senator Bray requested that the Department of Correction (DOC) bring statistics on the number of offenders in DOC custody, the offenses that they committed, the number in treatment for drug and alcohol addiction, and the numbers of women and minorities in the DOC.

The next meeting will be October 27th at 1:30 pm. Senator Bray adjourned the meeting at 2:49 pm.